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EK/DLS/mr

Paper No. 18

In re Application of :
Ole K. Nilssen :
Serial No. 178,107 :
Filed: August 17, 1980 : ON PETITION
For: ELECTRONIC INVERTER AND
BALLAST CIRCUITS :
:

This is a decision on petition under 37 CFR 1.137, filed March 15, 1982 to revive the above-identified application.

A petition to revive an abandoned application under 35 U.S.C. 133 and 37 CFR 1.137 must be accompanied (1) by an adequate verified showing of the cause of unavoidable delay, (2) by the proposed response to the outstanding Office action and (3) by the petition fee of fifteen dollars (\$15). This petition lacks item (1) above.

The record indicates that on Office action was mailed on August 4, 1981 and that two requests for one-month extensions of time, extending the time for response until January 4, 1982, were granted. On January 4, 1982, an amendment was filed by applicant and on January 21, 1982 a supplemental amendment was filed. On January 27, 1982, the examiner held the amendments to be not fully responsive to the Office action under 37 CFR 1.111(c) and a one (1) month period for completing the response was set. On February 23, 1982, a request for extension of time to respond to the examiner's requirement was filed and this request was denied on February 26, 1982 by the Director of Group 210. Accordingly, the application became abandoned.

Petitioner's attorney states that he expected the request to be granted because it had been his experience "that such first requests...are normally granted."

The controlling rule in the instant case is set forth in 37 CFR 1.135(c) and M.P.E.P. 710.02(c). The examiner considered the lack of compliance with the Office action of August 4, 1981 to be an inadvertent omission. The Manual of Patent Examining Procedure states:

"Once an inadvertent omission is brought to the attention of the applicant the question of inadvertence no longer exists. Therefore, any further time to complete the response would not be appropriate under 37 CFR 1.135(c). Accordingly, no extension of time will be granted in these situations." M.P.E.P. 710.02(c).

Under the circumstances, petitioner has not carried his burden of proof to show that the delay was unavoidable as required by statute and by regulations of the Patent and Trademark Office.

Public Law 97-247, which revised patent and trademark fees provides for the revival of an "unintentionally" abandoned application without a showing that the delay in prosecution or in late payment of the issue fee was "unavoidable" and for the reinstatement of an "unintentionally" lapsed patent without a showing that the late payment of the balance of the issue fee was "unavoidable". Rules implementing these provisions have been promulgated; 37 CFR 1.137(b), 1.155(c), 1.316(c) and 1.317(c). In order to qualify, a petition must be filed within one year of the date of abandonment of the application or within three months of a first decision on a petition alleging "unavoidable" delay.

An "unintentional" petition must be accompanied by the fee required by law. In this instance the fee required by law is \$500.00. If applicant can qualify as a "small entity" and does so prior to or together with the payment of the fee, the fee will be one half of the amount indicated. See 37 CFR 1.27 (47 FR 40143, September 10, 1982).

Since this decision represents such a "first decision" on petition based on a showing of "unavoidable" delay, YOU HAVE THREE (3) MONTHS FROM THE DATE OF THIS DECISION OR ONE (1) YEAR FROM THE DATE OF ABANDONMENT, WHICHEVER IS LONGER, IN WHICH TO FILE AN "UNINTENTIONAL" PETITION or your right to do so will be lost.

The petition is denied.



William Feldman
Deputy Assistant Commissioner for Patents

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